

ASSEMBLY BILL

No. 163

Introduced by Assembly Member Weber

January 13, 2017

An act to add Sections 38006 and 38007 to the Education Code, relating to school safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 163, as introduced, Weber. School safety: peace officer interactions with pupils.

Existing law requires school districts and county offices of education to be responsible for the overall development of comprehensive school safety plans for its schools operating kindergarten or any of grades 1 to 12, inclusive. Existing law authorizes the governing board of a school district to establish a school police department under the supervision of a school chief of police and to employ peace officers.

This bill would require the governing board of a school district to adopt and annually review a policy regarding the scope of peace officer interactions, including, but not limited to, those employed by a school police department or by a local law enforcement agency, with pupils and to consider how to reduce the presence of peace officers on campus. By imposing additional duties on school districts, the bill would impose a state-mandated local program. The bill would require a school district, before the beginning of the 2018–19 school year, as a condition of having a school police department to adopt specified policies, or as a condition of entering into or continuing an agreement with a local law enforcement agency to have one or more regularly assigned peace officers at any of its schools to enter into a memorandum of understanding containing specified policies, regarding the scope of

peace officer interactions with pupils. The bill would require those policies to include specified elements, including, among others, that school staff only call a peace officer when there is a real and immediate physical threat to pupils, teachers, or public safety or when mandated by existing law, that a peace officer not arrest or discipline pupils for violations of school rules or for low-level misconduct, and that a peace officer not interview or arrest a pupil on a school campus during school hours absent a real and immediate physical threat to pupils, teachers, or public safety.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Excellent and equitable public education is grounded in the
- 4 California Constitution and is essential to the well-being of
- 5 individuals, communities, and the State of California. For pupils
- 6 to access an excellent public education, they must have a healthy,
- 7 supportive, and safe learning environment. Positive relationships
- 8 and a supportive school culture are crucial to that environment.
- 9 (b) Over the past two decades, law enforcement, including police
- 10 officers, in the United States has increasingly displaced school
- 11 administrators as disciplinarians by responding to minor offenses
- 12 and conduct violations that pose no direct threat to personal safety.
- 13 This increase in pupil-law enforcement interactions has funneled
- 14 thousands of pupils in California into the school-to-prison pipeline
- 15 and created adverse legal consequences for school districts.
- 16 Moreover, restrictive and punitive “safety” measures such as locked
- 17 doors, metal detectors, and a law enforcement presence on campus
- 18 increase disorder by making pupils more fearful and less trusting
- 19 of school officials and law enforcement.

(c) During the 2013–14 school year, California K–12 schools reported 22,746 referrals of pupils to law enforcement and 9,540 pupil arrests. Pupils of color, pupils with disabilities, pupils in low-income households, and lesbian, gay, bisexual, transgender, and questioning pupils are disproportionately affected by these arrests and referrals to law enforcement. From 2013 to 2014 in California, American Indian pupils were 3.4 times as likely, Black pupils were 2.7 times as likely, and Hawaiian/Pacific Islander pupils were 1.4 times as likely as their White peers to receive a school-based referral to law enforcement. Additionally, Black pupils were three times as likely, American Indian pupils were twice as likely, and Hawaiian/Pacific Islander pupils were 1.5 times as likely as White pupils to be subjected to school-related arrest. In addition, in some large school districts in California, Latino pupils are significantly more likely than White pupils to be referred to law enforcement or arrested at school. Pupils with disabilities were three times as likely as pupils without disabilities to be arrested in school. The average arrest rate in California schools where more than 80 percent of pupils were in low-income households was seven times the average arrest rate in schools where less than 20 percent of pupils were in low-income households.

(d) Arrest and incarceration doubles a pupil’s odds of dropping out of school, even when controlling for relevant variables such as delinquent behavior, parental poverty, grade retention, and middle school grade point average. Juvenile arrest also increases a pupil’s chance of future imprisonment and decreases the pupil’s employability.

(e) Many school districts in California have conflicting, vague, or absent law enforcement policies that provide little to no meaningful guidance to school staff on when to call law enforcement to campus or how to interact with law enforcement. Most school districts in California give staff complete discretion to call law enforcement to address pupil misbehavior that should be handled by school staff such as administrators or counselors, including general school rule violations such as “disorderly conduct” or refusing to come in from recess, bullying and harassment, school “disruption,” and vandalism. Very few school districts in California have policies limiting law enforcement contact with pupils for rulebreaking or minor offenses.

1 (f) Many school districts in California do not require staff to
2 ask for identification from a person who comes on campus
3 purporting to be a law enforcement officer. Only a small percentage
4 of school districts have a policy describing how staff should
5 respond if a person claiming to be a law enforcement officer refuses
6 to provide proper identification.

7 (g) Most school districts in California provide inadequate
8 guidance to school staff on what they should do when law
9 enforcement questions a pupil on campus. Very few school districts
10 have policies ensuring that an adult other than a law enforcement
11 officer is present during questioning to make sure the pupil's civil
12 rights are observed during the questioning or ensuring that school
13 staff or law enforcement advises pupils that they have a
14 constitutional right to remain silent. A large majority of school
15 districts allow law enforcement officers to interview pupils
16 immediately upon demand, stating that school staff "shall not
17 hinder or delay" interrogations.

18 (h) Many school districts in California have no barriers to law
19 enforcement removing a pupil from school. Less than 20 percent
20 of California school districts require a school administrator to
21 determine why the law enforcement officer seeks to remove the
22 pupil from school. Very few school districts maintain any
23 procedures governing the enforcement of arrest warrants on school
24 campuses.

25 (i) Approximately one-third of school districts do not require
26 staff to keep any records of pupil-law enforcement interactions.
27 Even the school districts that require some data collection generally
28 do not aggregate or systematically analyze the data to better
29 understand the reasons for law enforcement interaction with pupils.

30 (j) Very few school districts in California have policies that
31 clearly describe the procedures that pupils and families can use to
32 submit complaints about law enforcement practices or interactions.

33 (k) In 2013, after concerted pressure by community activists
34 working in coalition, the Pasadena Unified School District and the
35 Pasadena Police Department entered into a memorandum of
36 understanding that mandates police officers "will not respond to
37 calls of discipline problems involving pupils" and requires the
38 police department to collect detailed data about interactions
39 between pupils and police officers. The police department worked
40 closely with the school district to train school staff to understand

1 that arrests and referrals to law enforcement should be used only
2 as a last resort. As a result of this training, school staff largely
3 stopped referring pupils to the police for breaking school rules or
4 other disciplinary issues. In addition, arrests, citations, and contact
5 between pupils and police officers have plummeted throughout
6 the school district. Within the last year, the police department
7 reduced the number of permanent police officers in the school
8 district from six to two, and may further reduce that number.

9 (l) In 2014, after concerted pressure by a coalition of community
10 and legal services groups concerned about the effects of police
11 practices on pupils, the Oakland Unified School District, which
12 has its own school police department, adopted policies that limit
13 the role of police in schools of the school district. The new policies
14 require that a parent or guardian be notified before his or her child
15 is questioned by police in school and require police officers to
16 advise pupils of their constitutional right to remain silent during
17 interrogation. The school district also adopted a complaint
18 procedure for pupils and other victims of police misconduct in
19 schools. The change came about after parents and other community
20 members organized over concern that Black pupils in the school
21 district are disproportionately targeted for referral to law
22 enforcement.

23 SEC. 2. Section 38006 is added to the Education Code, to read:

24 38006. (a) The governing board of a school district shall adopt
25 and annually review a policy regarding the scope of peace officer
26 interactions with pupils. In reviewing the policy, the governing
27 board of the school district shall consider how it can reduce the
28 presence of peace officers on campus. If a school district has a
29 permanent peace officer presence on campus, the governing board
30 of the school district shall consider and assess the viability of
31 alternatives to that presence, including, but not limited to,
32 restorative justice methods, to ensure school safety and promote
33 a climate for learning.

34 (b) For purposes of this section, “peace officer” has the same
35 meaning as defined in Chapter 4.5 (commencing with Section 830)
36 of Title 3 of Part 2 of the Penal Code and includes, but is not
37 limited to, a peace officer who is employed by a school police
38 department or by a local law enforcement agency.

39 SEC. 3. Section 38007 is added to the Education Code, to read:

1 38007. (a) Before the beginning of the 2018–19 school year,
2 a school district shall, as a condition of having a police department
3 established pursuant to Section 38000, adopt the policies listed in
4 subdivision (b). Before the beginning of the 2018–19 school year,
5 a school district shall, as a condition of entering into or continuing
6 an agreement with a local law enforcement agency to have one or
7 more regularly assigned peace officers at any of its schools, enter
8 into a memorandum of understanding with the local law
9 enforcement agency containing the policies listed in subdivision
10 (b). The policies listed in subdivision (b) only address the role of
11 peace officers and are not intended to take away any responsibilities
12 for handling pupil discipline from school staff.

13 (b) (1) School staff shall only call a peace officer when there
14 is a real and immediate physical threat to pupils, teachers, or public
15 safety, or when mandated by existing law. A peace officer shall
16 not arrest or discipline pupils for violations of school rules or for
17 low-level misconduct. Counselors and other school officials shall
18 handle bullying, harassment, disruptiveness, vandalism, drug and
19 alcohol abuse, and other nonviolent incidents.

20 (2) A peace officer shall not interview a pupil on a school
21 campus during school hours absent a real and immediate physical
22 threat to pupils, teachers, or public safety. When a threat
23 necessitates that a peace officer interview a pupil on a school
24 campus, the peace officer shall do all of the following:

25 (A) Notify the principal immediately when he or she arrives on
26 campus.

27 (B) Provide identification, show proper credentials, and cite the
28 legal authority for his or her actions when deployed to a school
29 campus to question or detain a pupil. If the peace officer refuses
30 to cite the legal authority for the interview, the principal or designee
31 of the principal shall document the refusal, consult with the legal
32 counsel of the school district, and receive approval from the legal
33 counsel before allowing the interview to proceed.

34 (C) Explain to the school principal the reason for the interview
35 and the reason the interview must be done at school, and obtain
36 consent from the principal before proceeding.

37 (D) Conduct the interview in a private location outside of
38 instructional time.

39 (E) Notify the pupil's parent or guardian before the interview
40 and ask for his or her consent before commencing the interview.

1 (F) Advise the pupil of his or her constitutional rights, including
2 the right to remain silent, and explain to the pupil that anything he
3 or she says can be used against him or her in court or otherwise.

4 (G) Allow the pupil to have his or her parent or guardian, or, if
5 the parent or guardian is unavailable or if the pupil prefers, a school
6 employee of the pupil's choosing, present during questioning.

7 (H) Not restrain or handcuff the pupil during the interview.

8 (3) A peace officer shall not arrest a pupil on a school campus
9 during school hours absent a real and immediate physical threat
10 to pupils, teachers, or public safety. When a threat necessitates
11 that a peace officer arrest a pupil on a school campus, the peace
12 officer shall do all of the following:

13 (A) Have a valid warrant.

14 (B) Explain to the school principal the reason for the arrest and
15 the reason the arrest must be done at school.

16 (C) Conduct the arrest in a private location.

17 (D) Advise the pupil of his or her constitutional rights, including
18 the right to remain silent and the right to an attorney, and explain
19 to the pupil that anything he or she says can be used against him
20 or her in court or otherwise.

21 (E) Notify the pupil's parent or guardian before the arrest.
22 School staff shall also separately notify the pupil's parent or
23 guardian immediately upon the arrest, as required by Section
24 48906.

25 (c) Within three months of adopting, or entering into a
26 memorandum of understanding that contains, the policies listed
27 in subdivision (b), the school district and the local law enforcement
28 agency shall ensure that a copy of the policies is distributed to
29 each of the entity's respective employees and that appropriate
30 training regarding the policies and the responsibilities of each
31 employee has been provided to employees. The school district and
32 the local law enforcement agency shall provide any new employee
33 with a copy of the policies listed in subdivision (b) within a week
34 of the employee's first day of employment. The school district
35 shall include the policies in a handbook annually distributed to
36 pupils and parents pursuant to Section 48980 and shall publicly
37 post the policies on the school district's Internet Web site.

38 (d) To ensure transparency and accountability, the governing
39 board of a school district that has a police department established
40 pursuant to Section 38000 or that has an agreement with a local

1 law enforcement agency to have one or more regularly assigned
2 peace officers at any of its schools shall establish a, or use an
3 existing, comprehensive, easily understood, well-publicized formal
4 complaint process open to pupils, families, and community
5 members to report incidents of possible peace officer misconduct
6 at schools or during interactions with pupils.

7 (e) For purposes of this section, “peace officer” has the same
8 meaning as defined in Chapter 4.5 (commencing with Section 830)
9 of Title 3 of Part 2 of the Penal Code and includes a peace officer
10 who is employed by a school police department or by a local law
11 enforcement agency in an agreement with a school district to have
12 one or more regularly assigned peace officers at a school.

13 SEC. 4. If the Commission on State Mandates determines that
14 this act contains costs mandated by the state, reimbursement to
15 local agencies and school districts for those costs shall be made
16 pursuant to Part 7 (commencing with Section 17500) of Division
17 4 of Title 2 of the Government Code.